IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 721 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes, but only para-8 which is marked { }

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

JAMLA HARSING MEDA

Versus

STATE OF GUJARAT

Appearance:
MR JV DESAI for Petitioner
Mr. K.P.Raval, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 13/08/97

ORAL JUDGEMENT

(Per : Panchal,J.)

By means of filing this appeal under section

374(2) of the Code of Criminal Procedure, 1973 the appellant has challenged judgment and order dated October 19,1989 rendered by the learned Additional Sessions Judge, Panchmahals at Godhra,in Sessions Case no.45/89 by which he is convicted under sections 302 and 324 of the Indian Penal Code and sentenced to R.I. for life for the offence punishable under section 302 of the Indian Penal Code as well as R.I. for one year and fine of Rs.500/i/d imprisonment for 3 months for the offence punishable under section 324 of the Indian Penal Code. It may be mentioned that the substantive sentences are ordered to run concurrently.

2. The first informant Radhaben, widow of Ramasu Havsing Meda, is resident of village Chhapari. At the relevant time she was residing at the said village with her husband. The appellant is son of uncle of deceased Ramasu Havsing Meda. There were disputes between the appellant and the deceased with reference to a land situated at village Chhapari. According to the prosecution, three years prior to the date of incident the appellant and his father had assaulted the deceased and, therefore, case against them was registered. The incident in question took place on January 22,1989 at about 4.30 p.m. At the relevant time, the deceased and the original informant Radhaben were sitting in the courtyard of their house. At that time, the appellant armed with an axe came there and immediately gave blow with axe on head of the deceased. Because of injury the deceased bleeded profusely. On seeing that her husband was being assaulted Bai Radha raised shouts and, therefore, the appellant also caused injury on her head by means of giving blow with head of the axe. On shouts being raised by Radhaben, brother-in-law and sister-in-law of Radha rushed to the place of incident. One Kasana Jokhana was requested to bring rickshaw from Dahod. On arrival of rickshaw, injured were removed to Dahod Government Dispensary. The complainant gave complaint at about 7.30 p.m., which was registered by police officer incharge of Dahod Rural Police Station vide I. C.R.10/89 for the offences punishable under sections 326, 323 & 114 of the Indian Penal Code. The then P.S.I. of Dahod Rural Police Station was on leave. Therefore, Kalyansinh V.Sagar who was Senior P.S.I., Dahod Town Police Station took over the investigation. The Investigating Officer visited Government Hospital, but found that injured Ramsu Havsing Meda was unconscious. The investigating officer, therefore, went to village Chhapari and made inquiry about the accused, but the accused was not available in the village. On January 23,1989, investigating officer learnt from

medical officer, Cottage Hospital that Ramsu Havsing had succumbed to his injuries. Under the circumstances, investigating officer made report to the Court of learned Judicial Magistrate, First Class stating that offence punishable under section 302 I.P.C. be added in the complaint. From the record of the case it is evident that request made by the investigating officer was accepted by the Court. The investigating officer held inquest on dead body of deceased Ramsu Meda at Cottage Hospital in presence of panchas. Autopsy on dead body of deceased Ramasu was performed by Dr.Amitaben Chaturvedi. The investigating officer thereafter prepared panchnama of place of occurrence fromwhere he seized soil soaked in blood, control soil as well as a piece of cloth which was found blood stained. The investigating officer also recorded statement of witnesses who were found conversant with the facts of the case. On January 24,1989 Mr. Bihol, Police Sub Inspector of Dahod Rural Police Station resumed duties and, therefore, investigation was handed over to him. The accused was arrested on January 25,1989 and pursuant to the information provided by the accused willingly, axe was discovered under a panchnama. The articles which were seized during the course of investigation were sent to Forensic Science Laboratory for analysis. On completion of investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate, First Class, Dahod for offences punishable under sections 302 & 324 of the Indian Penal Code as well as section 135 of the Bombay Police Act.

3. As offence punishable under section 302 I.P.C. is triable by a Court of Sessions, the case was committed to Sessions Court for trial where it was numbered as Sessions Case no.45/89. The learned Additional Sessions Judge, Panchmahals at Godhra framed necessary charge at Exh.2. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Radhaben Ramsu PW.1, exh.11, (2) Dr. Amitaben B.Chaturvedi, pw.2, exh.13, (3) Jalu Surpal, pw.3, exh.15, (4) Dr.Babulal b.Mittal, pw.4 exh.16, (5) Nanasu Virsingh, pw.5, exh.18, (6) Hurpal Havsing pw.6, exh.22, and (7) Kalyansinh V.Sagar, pw.7, exh.27, to prove case against the appellant. The prosecution also produced documentary evidence such as complaint filed by Radhaben, postmortem notes prepared by Dr. Chaturvedi, injury certificates of the deceased and Radhaben, panchnamas prepared during the course of investigation, report of Forensic Science Laboratory etc. to prove the charge against the appellant. After recording of evidence of prosecution witnesses was over, learned Judge questioned

the appellant generally on the case and recorded his statement under section 313 of the Code of Criminal Procedure,1973. In his statement under section 313 of the Code, the appellant denied case of the prosecution, but did not lead any evidence in his defence.

4. On appreciation of evidence led by the prosecution,learned Judge held that prosecution has proved its case beyond reasonable doubt that the appellant had committed murder of deceased Ramsu Havsing Meda and caused injuries to witness Radhaben. However, learned Judge held that no evidence was led by the prosecution to prove that the appellant had committed offence punishable under section 135 of the Bombay Police Act. In view of these conclusions, learned Judge convicted the appellant under sections 302 and 324 of the Indian Penal Code and imposed sentences which have been referred to earlier, giving rise to the present appeal.

5. Mr. J.V.Desai, learned Counsel for the appellant has taken us through the entire evidence on record. It was submitted that police officer incharge of Dahod Rural Police Station who had reduced into writing information given by Bai Radha, is not examined by the prosecution and, therefore, the learned Judge has committed material error in admitting the complaint in evidence which has vitiated conviction of the appellant. After referring to the evidence of complainant Radhaben in detail it was pleaded that the complaint was given after mid-night on January 23,1989 and as the appellant was named therein because of enmity and after due deliberation, the appellant should be acquitted. The learned Counsel for the appellant emphasised that name of the appellant as assailant was not disclosed at the earliest point of time and, therefore, in any view of the matter, benefit of doubt deserves to be granted to the appellant. It was claimed that evidence of witness Hurpal Havsing is materially contradicted with his previous police statement and, therefore, learned Judge has committed material error in placing reliance on evidence of the said witness. What was asserted on behalf of the appellant was that prosecution has not led satisfactory evidence to bring home guilt of the appellant and, therefore, the appeal should be allowed.

6. Mr. K.P.Raval, learned A.P.P. contended that in view of the deposition of Bai Radha the complaint lodged by her is rightly admitted in evidence by the learned Judge and as the defence has used the same for contradicting maker of it, it should be held by the Court

that it was rightly admitted and read in evidence by the Trial Court. It was pleaded by the learned Counsel for the State Government that even if the Court comes to the conclusion that complaint filed by Bai Radha is not admissible in evidence, that would not make any difference to the prosecution case because the prosecution case stands amply proved by the evidence of Radhaben, which is trustworthy and reliable. In the alternative, it was contended that even if Court were to look for corroboration to the evidence of Bai Radha that is available in plenty in the form of evidence of witness Jalu and witness Hurpal and, therefore, conviction of the appellant is not vitiated in any manner whatsoever. What was claimed on behalf of the State was that prosecution having proved the case beyond reasonable doubt, the appeal should be dismissed by the Court.

7. The fact that Ramasu Havsing Meda met a homicidal death is not questioned before us in the present appeal. The evidence of injured eye witness Radhaben establishes that the deceased had sustained injuries by means of an axe. In the inquest report exh.7 which was prepared by the investigating officer at Cottage Hospital, injuries sustained by the deceased are enumerated in detail. The autopsy on dead body of deceased Ramasu was performed by Dr. Amita B. Chaturvedi. The medical officer in her deposition which is recorded at exh.13 has mentioned in detail the injuries which she had noticed at the time of performance of necropsy. The injuries noticed by Dr. Chaturvedi are also mentioned in the postmortem notes prepared by her and produced at exh.14. In the postmortem notes the cause of death is mentioned to be intracratial haemorrhage. Having regard to the substantive evidence of Dr. Amita Chaturvedi, which is amply corroborated by postmortem notes,we are of the view that finding recorded by the Trial Court that deceased Ramasu Havsing Meda died a homicidal death, is eminently just and is hereby upheld.

{8. The complaint filed by Radhaben is admitted in evidence at exh.12 in the case. Radhaben in her examination-in-chief stated that on way to Cottage Hospital she had gone to Dahod Rural Police Station where she was questioned about the incident and thereafter her thumb impression was obtained on complaint. The fact that officer incharge of police station who reduced into writing the information given by Radhaben, is not examined by the prosecution as one of the witnesses is not in dispute.Under the circumstances, the question arises as to whether complaint produced by Radhaben can be received in evidence ? A complaint given by a person

or information given by a person under section 154 of the Code of Criminal Procedure does not by itself become evidence automatically. It can go in as evidence only to corroborate or contradict the evidence of the maker of it. It would be admissible in evidence under section 157 of the Evidence Act.As section 154 of the Code of Criminal Procedure provides that the information if given orally shall be reduced to writing, provisions of section 91 of the Evidence Act are attracted. This section provides that when any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such matters, except document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of the Evidence Act. It is only that complaint which is reduced to writing under section 154 of the Code of Criminal Procedure, that can be used for the purpose of corroborating or contradicting the maker of it. Even if whole complaint is entered into prescribed book, that would not be complaint. Entries in the book prescribed under section 154 of the Code of Criminal Procedure,1973 may be relevant under section 35 of the Evidence Act. But, these entries have to be proved. Report made to a Magistrate as provided in section 157 of the Code of Criminal Procedure may be a public document, but being a report is not relevant under section 35 of the Evidence Act. Where a document is written by one person and signed by another, hand-writings of the former and the signature of the latter have both to be proved in view of section 67 of the Evidence Act. As prosecution has not examined police officer incharge of Dahod Police Station who had reduced the information given by Radhaben to writing, we are of the view that the so-called complaint given by Bai Radha is not proved as required by section 67 of the Act and, therefore, it was not admissible in evidence. The fact that defence had used the complaint for contradicting its maker, would not make the complaint admissible in evidence. As the complaint was not admissible in evidence, we are of the view that an error is committed by the learned Judge in concluding that evidence of Bai Radha is materially corroborated by her complaint. As the complaint filed by Radhaben is not admissible in evidence, the Court will have to proceed on the footing that there is absence of First Information Report. The absence of First Information Report may cast a cloud of suspicion and tend to weaken the prosecution case in given facts. However, there is no rule that in absence of First Information Report,the prosecution case must be rejected in toto or that it must be thrown over board. The reason is that First Information Report is never

treated as a substantive piece of evidence and it can be used either for corroborating or contradicting the maker of it. The Court has to decide the question whether prosecution has proved its case beyond reasonable doubt or not with reference to substantive evidence led before the Court. The substantive evidence in a criminal trial consists of deposition on oath of the witnesses who are subjected to cross-examination at the hands of experts. Once the Court finds that the substantive evidence led before the Court is trustworthy and reliable, the Court will have to record necessary conviction even in absence of First Information Report.}

9. In the light of above stated principles, we will proceed to examine the question whether prosecution has proved its case beyond reasonable doubt or not. The first witness examined by the prosecution is Radhaben Ramasu, widow of deceased Ramasu Meda.In her evidence, the witness stated that at the time of incident she was residing with her deceased husband. So far as incident is concerned, it was stated by her that the incident took place at about 4.30 p.m. at the time when she and her husband were sitting in the courtyard of their house. The witness asserted before Court that the appellant had come with an axe in his hand and had given blow with the said axe on the head of her husband. The witness claimed that on shouts being raised by her,she was also assaulted by the appellant and the appellant had caused injuries on her head by means of axe. The witness deposed that on shouts being raised by her,Jalu, wife of elder brother of the deceased and Hurpal, who is elder brother of the deceased, had come to the place where she and her husband were assaulted. According to the witness,her husband was removed to Government Hospital in a rickshaw where he expired at about 12.00 mid-night during the course of treatment. In her lengthy cross-examination by the learned Counsel for the defence, she has stated that on way to Hospital she had gone to police station where her complaint was recorded. During cross-examination she revealed that after admissioin of her husband in the Hospital, she was again called at police station where her detailed complaint was registered. It was suggested to her that she had named appellant at the instance of her relative and because of enmity. However, she has emphatically denied said suggestion. During cross-examination,she also claimed that she had pointed out place of occurrence to the police officer who had visited the site during night hours. The fact that witness Radhaben had received injuries is not in dispute. When a person receives injuries in the course of occurrence, there can be hardly any doubt regarding his

presence at the spot. It is well-known principle of criminal jurisprudence that injured witnesses would not spare a real assailant and implicate an innocent person falsely in a serious case. Similarly, close relatives would be the best witnesses and would be the last to screen real culprit. The question of false involvement of an innocent person may arise in a case where more than one persons are arraigned as accused. Here in this case, the appellant is the only person who is named by injured Bai Radha as her assailant and assailant of her deceased husband. Though she has been searchingly cross-examined by the defence, defence has failed to elicit anything on record which would discredit her version regarding incident in question and role attributed by her to the appellant. Very convincing grounds would be required to discard the evidence of injured witnesses whose injuries would at least permit a reasonable inference that they were present at the time of occurrence. During her cross-examination it was never suggested tothe witness that some another person had caused injury to her husband and herself and the appellant was falsely involved by her in the case. There is no rule which requires that the evidence of an injured person must be corroborated by other evidence on record. Testimony of injured witness whose presence at the time of occurrence in question is not in doubt, should be accepted without corroboration if the witness has given consistent evidence attributing specific overt acts to the accused person. On the facts and in the circumstances of the case, we are of the view that Bai Radhaben whose presence at the time of occurrence is not in doubt, has given consistent evidence attributing specific overt acts to the appellant and, therefore, her evidence deserves to be accepted even in absence of corroboration. Though the witness stated that after admission of her husband in the Hospital, she was called at the police station where her detailed complaint was registered,no question at all on the point concerned has been put by the defence to the investigating officer Mr. Sagar,who was examined at exh.27. It is true that there are some discrepancies in her evidence with regard to lodging of the complaint and as to whether she had given complaint while on way to Hospital or had given it subsequently. However, it is well settled principle of appreciation of evidence that Court must not attach undue importance to the minor discrepancies, but must consider broad spectrum of prosecution version. It hardly needs to be emphasised that Bai Radha is an illiterate adivasi lady and, therefore, discrepancies might have crept in her evidence due to normal errors of perception or observation or due to lapse of memory. However, the evidence of the witness read as a whole appears to have a

ring of truth. The discrepancies appearing in her evidence are trivial in nature and not touching the core of the case. Therefore, it is safe to rely on her evidence even without corroboration.

10. Even if one were to look for corroboration, corroboration is available in plenty in the form of medical evidence and evidence of two witnesses viz. Jalu and Hurpal. Dr. Babulal B.Mittal, pw.4 exh.16 has deposed in his evidence that on January 22,1989 he had examined Radhaben Ramasu at 8.25 p m., as she had come with police yadi. The doctor has, in his substantive evidence mentioned the injury which was noticed by him on her. He has also stated that he had issued certificate which is at exh.17. The doctor clearly asserted that injury which was noticed on Radhaben Ramasu was possible by head of an axe. In his cross-examination, the doctor deposed that injury found on Radhaben was simple in nature. Though the doctor agreed to the suggestion that injury noticed on Radhaben was possible by a fall, there is no evidence on record that Radhaben had sustained injury by a fall. The evidence of Dr. Mittal shows that Radhaben is materially corroborated regarding her injury by medical evidence.So far as injuries on deceased are concerned, they are enumerated in detail by Dr. Amita Chaturvedi who had performed autopsy on the dead body. Those injuries are also mentioned in the postmortem notes. The claim of eye witness Radhaben that the appellant had given blow with axe on the head ofthe deceased stands amply corroborated by the evidence of Dr. Chaturvedi and postmortem notes prepared by her. The evidence of Dr. Mittal shows that he had also treated deceased Ramasu Meda on January 22,1989 at about 6.20 p.m. at the Hospital and found injuries on his head as enumerated in his deposition. The witness has produced certificate of injuries sustained by the deceased at exh.25. Thus, evidence of injured witness Radha regarding injuries on the deceased also gets support from evidence of Dr. Mittal. On overall view of the matter, we are satisfied that medical evidence on record fully corroborates claim of injured Radhaben regarding injuries sustained by her and her husband.

11. Witness Jalu Surpal,who is wife of elder brother of the deceased, is examined as prosecution witness no.3 at exh.15. In her examination-in-chief the witness stated that she is residing at village Chhapari with her husband and sons. According to her, on the date of incident at 4.00 p.m. she was at her house with her husband. The witness deposed before the Court thatthe appellant who was residing at the back of her house, had

passed with an axe in front of her house and was going towards the residence of deceased Ramasu. She claimed that brother-in-law of the appellant had followed the appellant and made unsuccessful attempt to snatch the axe from the appellant. According to the witness, as it was noticed that the appellant was going towards the residence of Ramasu, she and her husband Hurpal had followed the appellant and when they reached near the house of the deceased, they heard shouts of Radha. The witness has in no uncertain terms claimed that at that time the appellant was returning with an axe in his hands and her brother-in-law had sustained injuries. The witness also stated regarding injuries sustained by Radhaben. The witness informed the Court that on the instructions of her husband, she had raised shouts, as a result of which several persons had collected at the place of incident and she had instructed one Karsan to bring rickshaw. The witness stated in her evidence that on rickshaw being brought,the deceased and injured Radhaben were removed to Hospital. In her cross-examination, she denied the suggestion made by the defence that they had started for the residence of deceased Ramasu after hearing shouts raised by Radhaben. The defence has been able to bring on record a contradiction with reference to evidence of investigating officer and the contradiction indicates that she had not pointed out place of occurrence to the police. Though the witness is cross-examined at length, nothing has been brought on record, which would render her claim made in examination-in-chief doubtful in any manner. The evidence of this witness also supports the evidence of Radhaben. Similarly,the evidence of witness Hurpal Havsing Meda pw.6, exh.22 also lends corroboration to the evidence of Radhaben. It is true that the witness has made improvement during his examination before the Court. However, fact remains that he together with his wife Jalu had followed the appellant who was going towards the house of deceased Ramasu and had seen the appellant returning with axe in his hands.

12. The above referred to discussion of the evidence on record would establish that the evidence of Radhaben is corroborated by other reliable evidence on record. Under the circumstances, we are of the view that absence of First Information Report has not eroded the case of prosecution in any manner whatsoever and no error is committed by the learned Judge in placing reliance on the evidence of injured Radhaben for convicting the appellant for the charges levelled against him.

13. The prosecution has also led evidence regarding

motive which prompted the appellant to commit crime in question. Exh.139 is complaint filed by deceased Ramasu Havsing Meda against the appellant for the offences punishable under sections 326 & 504 of the Indian Penal Code with reference to an incident which took place on January 27,1996. The said complaint clearly establishes that there were disputes between the deceased and the appellant regarding land situated at Dahod. Again, exh.29 shows that at the instance of deceased Ramasu Havsing Meda, Police Sub Inspector, Dahod Rural Police Station had initiated proceedings under section 107 of the Code of Criminal Procedure,1973 against the appellant and others because of disputes pertaining to survey no.110 situated at Dahod. Similarly, exh.30 shows that in view of complaint filed by the deceased against the appellant for the offences punishable under sections 323 and 504 of I.P.C., proceedings under section 107 of the Code were initiated against the appellant. Thus, the prosecution, in our view, has established that relations between the deceased and appellant were strained and there were disputes between them with reference to land situated at Dahod. If the complaints produced at exhs. 28,29 & 30 are read with the evidence of injured witness Radhaben and witness Jalu,there is no manner of doubt that prosecution has proved motive which prompted the appellant in committing the crime in question. Therefore, the finding recorded by the Trial Court that motive is proved by the prosecution is also eminently just and deserves to be upheld.

14. The evidence led by the prosecution establishes that the appellant had caused injuries to the deceased by means of an axe. Dr. Chaturvedi stated in her evidence that injury caused to the deceased on head was sufficient in the ordinary course of nature to cause death. When the injury caused on vital part of body is proved to be fatal, intention to kill can be attributed to the appellant. It is not the case of the appellant that blow was aimed on some other part of body of the deceased and because of supervening cause like sudden intervention by some-one or movement by the deceased,the blow had struck on head of the deceased. It was intention of the appellant to cause that very injury which is noticed by Dr. Chaturvedi while performing autopsy on the dead body of the deceased. Under the circumstances, we are of the view that clause thirdly of section 300 is attracted to the facts of the present case and the appellant is rightly convicted under section 302 of the Indian Penal Code.

15. The evidence of Radhaben read with evidence of

Dr. Mittal would show that the appellant had voluntarily caused hurt to Radhaben by dangerous weapon. Under the circumstances, no exception can be taken to the conviction of the appellant under section 324 of the Indian Penal Code. In view of the above discussion of ours, we are of the view that there is no substance in the appeal and the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal is ordered to be disposed of in terms of direction given by the learned Judge in the impugned judgment.

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